

1 INTRODUCTION AND SUMMARY

The California High-Speed Rail Authority (Authority) has circulated a Revised Draft Program Environmental Impact Report Material (Revised Draft Program EIR) to comply with the final judgment in the *Town of Atherton* litigation on the 2008 *Bay Area to Central Valley High-Speed Train (HST) Final Program Environmental Impact Report/Environmental Impact Statement (EIR/EIS)*. This chapter describes the basis for circulating the Revised Draft Program EIR, the contents of the revised document, the public comment period, how the Authority will use this document in its decision making, and the relationship of this document to the Authority's project-level EIRs.

1.1 Basis for Circulating Bay Area to Central Valley High-Speed Train Revised Draft Program EIR

In July 2008, the Authority certified the Final Bay Area to Central Valley HST Program EIR¹ (2008 Final Program EIR) for its compliance with the California Environmental Quality Act (CEQA). The Authority then selected the Pacheco Pass Network Alternative with San Francisco and San Jose Termini, preferred alignments, and preferred station locations for further study in project EIRs. The Authority also adopted a mitigation monitoring and reporting program and a statement of overriding considerations. The Authority took these actions in a duly noticed public meeting by adoption of Authority Resolution No. 08-01.

On August 8, 2008, the Town of Atherton, the Planning and Conservation League, the City of Menlo Park, the Transportation Solutions Defense and Education Fund, the California Rail Foundation, and the Bay Rail Alliance filed a lawsuit in the Superior Court for Sacramento County challenging the Authority's actions as being in violation of CEQA. (*Town of Atherton, et al., v. California High-Speed Rail Authority*, Sacramento Superior Court No. 34-2008-80000022.) Following extensive briefing in the case and a hearing on May 29, 2009, Judge Michael Kenny issued a ruling on August 26, 2009. A copy of the ruling is included as Appendix A. In that ruling, the Court concluded that the Authority's 2008 Final Program EIR failed to comply with CEQA in the following respects:

- **ADEQUACY OF PROJECT DESCRIPTION:** "The Court concludes that the description of the alignment of HSR tracks between San Jose and Gilroy was inadequate even for a programmatic EIR. The lack of specificity in turn results in an inadequate discussion of the impacts of the Pacheco alignment on surrounding businesses and residences which may be displaced, construction impacts on the Monterey Highway, and impacts on Union Pacific's use of its right-of-way and spurs and consequently its freight operations." (Ruling, p. 6.)
- **RECIRCULATION AFTER UNION PACIFIC RAILROAD ANNOUNCED ITS UNWILLINGNESS TO ALLOW USE OF ITS RIGHT-OF-WAY:** "[T]his Court concludes that various drawings, maps and photographs within the administrative record strongly indicate that [the Pacheco alignment is dependent upon the use of Union Pacific's right-of-way.] The record further indicates that if the Union Pacific right-of-way is not available, there may not be sufficient space for the right-of-way needed for the HST without either impacting the Monterey Highway or without the acquisition of additional amounts of residential and commercial property.

These are significant impacts which were sufficient to trigger recirculation of the FPEIR." (Ruling, pp. 19-20.)

¹ The May 2008 Final Bay Area to Central Valley High-Speed Train Program Environmental Impact Report was certified by the California High-Speed Rail Authority in July 2008.

- **LAND USE IMPACTS ALONG SAN FRANCISCO PENINSULA:** “As discussed elsewhere in this Court’s ruling, Union Pacific has stated it is unwilling to allow its right-of-way to be used for the project. The need for acquiring additional property is a related issue that will be required to be analyzed in connection with further analysis of the impact of Union Pacific’s denial of use of its right-of-way.” (Ruling, pp. 15-16.)

The Court also held the Authority’s CEQA finding on vibration impacts was not supported by substantial evidence. (Ruling, p. 14.) The Court rejected all other challenges to the content of the 2008 Final Program EIR raised in the litigation.

A final judgment was entered in the case on November 3, 2009, and the Court issued a peremptory writ of mandate on the same day. The judgment and writ directed the Authority to void its certification of the 2008 Final Program EIR, its approval of the Pacheco Pass Network Alternative, and its related approvals of CEQA findings, mitigation plan, and statement of overriding considerations. The writ also directed the Authority to comply with the judgment and with CEQA prior to taking any further action to certify the 2008 Final Program EIR.

On December 3, 2009, the Authority approved resolution HSRA 10-012 as the first step in complying with the court judgment and peremptory writ of mandate. This action rescinded the Authority’s certification of the 2008 Final Program EIR and approval of the Pacheco Pass Network Alternative with San Francisco and San Jose Termini, preferred alignments, and preferred station locations for further study. The Authority’s action also directed staff to prepare the necessary revisions to the program EIR and circulate them in accordance with CEQA for public comment.

1.2 Summary of Revised Draft Program EIR

The Authority revised and recirculated portions of its 2008 Final Program EIR to comply with the *Town of Atherton* court judgment described above. The requirement of the judgment to revise and recirculate portions of the program EIR did not require the Authority to start the program EIR process anew. (*Protect the Historic Amador Waterways v. Amador Water Agency* [2004] 116 Cal.App.4th 1099, 1112.) Recirculation of the EIR “may be limited by the scope of the revisions required.” (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* [2007] 40 Cal.4th 412, 449.) Where the scope of revisions is limited to certain chapters or portions of the EIR, a lead agency need only recirculate the chapters or portions that have been modified. (*Id.*; citing CEQA Guidelines, § 15088.5, subd. (c).)

Accordingly, the Revised Draft Program EIR contained the following revised information and analysis in response to the *Town of Atherton* court judgment:

Chapter 2: Revised Project Description and Revised Impact Analyses for San Jose to Gilroy

This chapter includes a revised narrative description of the location of HST tracks between San Jose and Gilroy that clarifies that the tracks would be located adjacent to, and not in, Union Pacific Railroad’s (UPRR’s) mainline right-of-way. The description clarifies the relationship of the UPRR right-of-way and the Monterey Highway right-of-way. This chapter also provides revised HST alignment maps and cross sections for San Jose to Gilroy.

Following the revised project description, this section includes a revised discussion of the impacts of the alignment between San Jose and Gilroy on surrounding businesses and residences that may be displaced, construction impacts on the Monterey Highway, impacts on black walnut trees along the Monterey Highway that may qualify as an historical resource, and a clarification of visual impacts. A discussion of the impacts on UPRR’s use of its right-of-way and spurs and its

freight operations between San Jose and Gilroy is included in Chapter 4 as part of a larger discussion of HST's interface with UPRR freight operations.

Chapter 3: Union Pacific Railroad Statements Refusing to Allow Use of Its Rights-of-Way and the Potential for Needing Additional Property for the HST Alignment Alternatives (new discussion)

This chapter includes new text that summarizes UPRR's May 13, 2008, and July 7, 2008, letters to the Authority and their relationship to the program EIR analysis. This chapter then addresses whether and to what extent UPRR's refusal of the use of its right-of-way may result in the need for acquiring additional residential and commercial property for each alignment alternative. The information in this chapter identifies that some alignment alternatives may result in higher land use and property impacts if UPRR mainline right-of-way is unavailable for the HST system.

Chapter 4: Impacts on Union Pacific Railroad Freight Operations (new discussion)

This chapter includes new text that addresses how the various alignment alternatives may affect UPRR freight operations by virtue of being in or adjacent to UPRR operating rights-of-way. This chapter also addresses the potential for secondary impacts that may occur as a result of efforts to avoid or mitigate impacts on UPRR freight operations, and describes that these secondary impacts and needed mitigation measures to address the secondary impacts will be addressed at the project level. This chapter concludes that accommodating UPRR freight operations is similar across the alternatives.

Chapter 5: Costs and Operations (revisions to Chapter 4 of the 2008 Final Program EIR)

This chapter makes changes to capital cost information included in Chapter 4 of the 2008 Final Program EIR to reflect the revised information in Chapter 2 for the San Jose to Central Valley Corridor. This chapter also includes changes to cost information to reflect the revised information in Chapter 3 for San Francisco to San Jose Corridor property impacts.

Chapter 6: High-Speed Train Network and Alignment Alternatives Comparison (revisions to Chapter 7 of the 2008 Final Program EIR)

This chapter makes the necessary changes to Tables 7.2-12, 7.2-13, 7.2-14, 7.2-15, 7.2-16, 7.2-17, 7.2-18, 7.2-19, 7.2-20, 7.2-21, 7.3-2, and 7.3-5 in Chapter 7 of the 2008 Final Program EIR to reflect the revised information and impact analysis in Chapter 2 for San Jose to Gilroy and the revised information in Chapter 3 for San Francisco to San Jose Corridor property impacts.

Chapter 7: Revised Draft Program EIR Material and Designation of a Preferred Network Alternative for Connecting the Bay Area to the Central Valley

This chapter synthesizes the information contained in this revised material and concludes that the new and revised information does not change the recommendation in the 2008 Final Program EIR that the Pacheco Pass Network Alternative with San Francisco and San Jose Termini is the Preferred Network Alternative.

Chapter 8: Unavoidable Adverse Impacts (revisions to Chapter 9 of the 2008 Final Program EIR)

This chapter discusses how the information contained in this revised material affects the unavoidable and adverse impacts in Chapter 9 of the 2008 Final Program EIR.

This Revised Draft Program EIR did not include changes to the vibration analysis in the 2008 Final Program EIR. The court ruling did not find fault with the vibration analysis in the program EIR but rather identified a contradiction between the analysis in the program EIR and the conclusion in the July 2008 CEQA Findings. The Authority will correct this contradiction when it adopts a new set of CEQA findings in conjunction with a new EIR certification and new project approval.

The remainder of the 2008 Final Program EIR either was not challenged in litigation, and is presumed adequate, or was determined by the Court to comply with CEQA

1.3 Public and Agency Involvement

The Authority has involved the public and other public agencies in the program environmental review process pursuant to the requirements of CEQA. This section describes the public and agency involvement efforts in the preparation of prior Bay Area to Central Valley HST environmental documents and the Revised Draft Program EIR.

1.3.1 Prior Draft Program EIR/EIS and Final Program EIR/EIS Notification and Circulation

Notice regarding the availability and the circulation of the 2007 Draft Program EIR/EIS was provided pursuant to CEQA and NEPA requirements. The Draft Program EIR/EIS was released for public review and comment on July 16, 2007. All 1,300 comments submitted to the Authority during this review period were addressed and responded to as part of the May 2008 Final Program EIR/EIS. The draft and final documents and/or notices were distributed to approximately 3,600 statewide contacts, including federal, state, and local elected officials; federal, state, and local agency representatives; chambers of commerce; environmental and transportation organizations; special interest groups; media; private entities; and members of the public. The Draft and Final Program EIR/EIS were made available for viewing and downloading at the Authority's web site, www.cahighspeedrail.ca.gov and also available at libraries in Fremont, Gilroy, Merced, Modesto, Mountain View, Oakland, Pleasanton, Palo Alto, Sacramento, San Francisco, San Jose, and Stockton. Newspaper announcements and postcards were distributed announcing a total of 8 public hearings that were held on the Draft Program EIR/EIS in 2007 in San Francisco, San Jose, Livermore, Oakland, Gilroy, Merced, Stockton, and Sacramento.

1.3.2 Notification and Circulation of the Revised Draft Program EIR Material

The Authority circulated a March 2010 Revised Draft Program EIR to comply with the final judgment in the *Town of Atherton* litigation on the 2008 Final Program EIR/EIS

Notice regarding the availability and the circulation of the March 2010 Revised Draft Program EIR was provided pursuant to CEQA. The Revised Draft Program EIR was made available to the public through the Authority website (www.cahighspeedrail.ca.gov) on March 4, 2010. Between March 8th and 12th, the Revised Draft Program EIR was distributed. Either a printed copy or a CD along with a Notice of Availability was sent to over 330 state and federal agencies, elected officials, Native American groups, other groups, and individuals who previously commented. In accordance with CEQA, a Notice of Completion was filed with the State Clearinghouse on March 11, 2010 initiating the required 45-day public comment period that extended to April 26, 2010. The Revised Draft Program EIR and a Notice of Availability and of a Public Meeting was also made available to 16 libraries for public viewing. These libraries, listed in Table 1-1, also had copies of the 2008 Final Program EIR/EIS available to the public. The Notice of Availability and Notice of a Public Meeting was distributed to approximately 3,800 individuals on the program mailing list on March 12, 2010 and published in 8 newspapers throughout Bay Area and Central Valley including the San Francisco Examiner, Fresno Bee, San Jose Mercury News, Daily Republic, Merced Sun Star, Modesto Bee, Oakland Tribune, and Sacramento Bee. On March 15th, a Notice of Availability and Notice of a Public Meeting postcard was further distributed to over 50,000 individuals identified as part of on-going project-level engineering and environmental studies. On March 22, 2010, the Authority also made the Bay Area to Central Valley HST Revised Draft Program EIR Material References available through the Authority's website.

Table 1-1
Revised Draft Program EIR Material Library Viewing Locations

Library	Location
Fremont Main Library, Reference Department	2400 Stevenson Boulevard Fremont, CA 94538
Gilroy Library	7387 Rosanna Street Gilroy, CA 95020
Livermore Public Library	1188 S Livermore Ave. Livermore, CA 94550
Menlo Park Library	800 Alma Street Menlo Park, CA 94025
Merced County Library	2100 "O" Street Merced, CA 95340
Stanislaus County Library, Government Documents Section	1500 "I" Street Modesto, CA 95354
City of Mountain View General Public Library	585 Franklin Street Mountain View, CA 94040
Oakland Public Library	125 14th Street Oakland, CA 94612
Palo Alto Main Library	1213 Newell Road Palo Alto, CA 94303
Pleasanton Public Library	400 Old Bernal Avenue Pleasanton, CA 94566
California State Library, Government Publications Section	914 Capitol Mall, Room 402 Sacramento, CA 95814
Sacramento Central Library	828 I St. Sacramento, CA 95814
San Francisco Main Library, Government Information Center, 5th Floor	100 Larkin Street San Francisco, CA 94102
Dr. Martin Luther King Jr. Library, Reference Department, Room 285	150 East San Fernando Street San Jose, CA 95112
Cesar Chavez Central Library	605 North El Dorado Street Stockton, CA 95202
Tracy Branch Library	20 E. Eaton Avenue Tracy, CA 95376-3100

The Authority held two Public Meetings in San Jose on April 7, 2010 to receive comments from the public and public agencies on the Revised Draft Program EIR Material. One meeting was held in the morning from 10:00 a.m. to 12:00 p.m. at the Sheriff's Auditorium at 55 West Younger Avenue in San Jose, and one was held from 5:00 p.m. to 7:00 p.m. at the Santa Clara County Board of Supervisors Chambers at 70 West Hedding Street in San Jose. Hundreds of people attended the two public meetings and more than fifty individuals offered verbal comments.

A. COMMENTS ON THE REVISED DRAFT PROGRAM EIR

Written comments on the Revised Draft Program EIR were sent to the Authority in the form of letters and faxes, and were also sent through the Authority's website. Comments from the two public meetings were transcribed as well. Table 1-2 lists the number of those providing comments during the public comment period including those from the public meetings. Some of the letters received listed multiple agencies or individuals. No comments were received from federal agencies. More than 540 people provided over 3,750 comments during the circulation period (either through written letters or oral testimony).

Table 1-2
Comment Submittals on the Revised Draft Program EIR

Type of Commenter	Number of Commenters	Number of Comments
State Agencies	2	21
Local Agencies	27	553
Organizations	25	265
Individuals	438	2,803
Public Hearings	53	113
Total	545	3,755

The verbal and written comments received during the public comment period addressed the broad spectrum of issues related to an EIR. Some comments addressed the revised and new materials in the Revised Draft Program EIR. Many other comments addressed the content of the May 2008 Final Program EIR. Most of the commenters expressed their views on the high-speed train project and the selection of a network alternative to connect the Bay Area to the Central Valley. The comments are included in Volume 2 of the Revised Final Program EIR.

1.4 California High-Speed Rail Authority's Preparation of and Use of Revised Final Program EIR

Following the public comment period on the Revised Draft Program EIR, the Authority has prepared this Revised Final Program EIR. The Revised Final Program EIR includes the full text of the Revised Draft Program EIR with changes based on the comments incorporated (Volume 1); written and verbal comments received on the Revised Draft Program EIR and responses to comments (Volume 2); and the complete 3-volume text of the 2008 Final Program EIR.

At a subsequent publicly noticed meeting, the Authority will consider the Revised Final Program EIR and the entire record before it, in making the following determinations of whether to:

- Certify the Revised Final Program EIR for compliance with CEQA.
- Select a network alternative, preferred alignments, and preferred station locations for further study in project-level EIRs.

- Approve findings of fact, a statement of overriding considerations, and a mitigation monitoring and reporting program in compliance with CEQA.

1.5 Relationship of Bay Area to Central Valley High-Speed Train Program EIR Process to Project-Level EIR Processes

The *Town of Atherton* court judgment on the 2008 Final Program EIR did not require the Authority to halt its project-level EIR work for the Bay Area to Central Valley sections, which includes San Francisco to San Jose and San Jose to Merced. The Authority's project-level work is therefore continuing at the same time the Authority is taking the steps needed to bring its program EIR into compliance with CEQA. At the conclusion of the program EIR process, the Authority will make a new decision on a network alternative, preferred alignments, and preferred station locations. The new decision will be carried forward for further study in project-level EIRs and may result in changes to one or more currently proceeding project-level EIRs.